

ORIGINAL

FILED
HARRISBURG

MAR 14 2002

MARY E. D'ANDREA, CLERK
Per ATS
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN CLEARY,

Plaintiff,

V.

KENNETH KYLER, et al.,

Defendants

Civil Action No. 1:CV-00-2125

(Judge Caldwell)

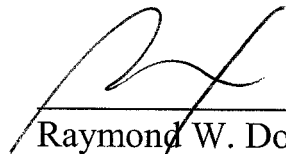
APPENDIX TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

AND NOW, come the Defendants, Kenneth Kyler, et al., by and through their attorney, Raymond W. Dorian, Assistant Counsel, and offer the following documents in support of their Motion for Summary Judgment:

1. PACER docket entries for the case of *Cleary v. Vaughn, et al.*, USDC-ED, No. 96-CV-4805.
2. Plaintiff's Complaint filed in *Cleary v. Vaughn, et al.*, No. 96-CV-4805 (Plaintiff's Deposition Exhibit 1).

3. Plaintiff's Deposition Exhibit 2.
4. Plaintiff's Deposition Exhibit 3.
5. Declaration of Superintendent Kenneth D. Kyler.
6. Declaration of Unit Manager William S. Ward.
7. Excerpts from Plaintiff's deposition taken October 23, 2001.

Respectfully submitted,



Raymond W. Dorian
Assistant Counsel
Attorney I.D. No. 48148

Pennsylvania Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: March 14, 2001

Docket as of April 9, 2000 4:04 pm

Web PACER (v2.3)

U.S. District Court
U.S. District Court of Eastern Pennsylvania (Philadelphia)

CIVIL DOCKET FOR CASE #: 96-CV-4805

CLEARY v. VAUGHN, et al

Filed: 07/05/96
Assigned to: JUDGE EDMUND V. LUDWIG
Demand: \$0,000
Nature of Suit: 550
Lead Docket: None
Jurisdiction: Federal Question
Dkt# in other court: None
Cause: 42:1983 Prisoner Civil Rights

JOHN CLEARY
PLAINTIFF

STEPHEN D. BROWN
FAX 215-994-2222
[COR LD NTC]
MICHAEL S. DOLUISIO
FAX 215-994-2222
[COR LD NTC]
CHRISTOPHER J. CULLETON
[COR LD NTC]
DECHERT, PRICE & RHOADS
1717 ARCH STREET
4000 BELL ATLANTIC TOWER
PHILA, PA 19103-2793
USA
TEL 215-994-2901
JOHN CLEARY
#DF5779
[COR LD NTC] [PRO SE]
S.C.I. - CAMPHILL
P.O. BOX 200
CAMPHILL, PA 17001-0200
USA

v.
DONALD T. VAUGHN,
SUPERINTENDENT
DEFENDANT
[term 03/27/97]
THOMAS D. STACHELEK, DEPUTY
SUPERINTENDENT
DEFENDANT
[term 03/27/97]
DAVID DIGUGLIELMO, HIS
SUCCESSOR IN OFFICE
DEFENDANT

U.S. District Court Web PACE (2.3) Docket Report

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| | |
|--------------------------------|----------------------------|
| [term 03/27/97] | |
| J. J. WELBY, HEARING EXAMINER | |
| DEFENDANT | |
| [term 03/27/97] | |
| G. SMITH, CORRECTIONAL OFFICER | SUE ANN UNGER |
| CAPTAIN | FAX 215-560-2494 |
| DEFENDANT | [COR LD NTC] |
| | CLAUDIA M. TESORO |
| | [term 11/19/97] |
| | [COR LD NTC] |
| | OFFICE OF ATTORNEY GENERAL |
| | 21 S. 12TH ST. |
| | 3RD FL. |
| | PHILA, PA 19107-3603 |
| | USA |
| | TEL 215-560-2127 |
| DENNIS BRUMFIELD, CORRECTIONAL | SUE ANN UNGER |
| OFFICER LT. | (See above) |
| DEFENDANT | [COR LD NTC] |
| | CLAUDIA M. TESORO |
| | [term 11/19/97] |
| | (See above) |
| | [COR LD NTC] |
| TIMOTHY LEGRANDE, CORRECTIONAL | SUE ANN UNGER |
| OFFICER | (See above) |
| DEFENDANT | [COR LD NTC] |
| | CLAUDIA M. TESORO |
| | [term 11/19/97] |
| | (See above) |
| | [COR LD NTC] |
| HEADEN, CORRECTIONAL OFFICER | SUE ANN UNGER |
| DEFENDANT | (See above) |
| | [COR LD NTC] |
| | CLAUDIA M. TESORO |
| | [term 11/19/97] |
| | (See above) |
| | [COR LD NTC] |
| PAJIL, CORRECTIONAL OFFICER | SUE ANN UNGER |
| DEFENDANT | [term 04/03/98] |
| [term 04/03/98] | (See above) |
| | [COR LD NTC] |
| | CLAUDIA M. TESORO |
| | [term 11/19/97] |
| | (See above) |
| | [COR LD NTC] |
| WHITMAN, CORRECTIONAL OFFICER, | SUE ANN UNGER |
| STATE CORRECTIONAL INSTITUTION | [term 04/03/98] |
| AT GRATERFORD | (See above) |
| DEFENDANT | [COR LD NTC] |
| [term 04/03/98] | CLAUDIA M. TESORO |
| | [term 11/19/97] |
| | (See above) |
| | [COR LD NTC] |

DOCKET PROCEEDINGS

DATE #

DOCKET ENTRY

7/5/96 1 MOTION BY PLAINTIFF JOHN CLEARY TO PROCEED IN FORMA PAUPERIS. (fb) [Entry date 07/05/96]

7/5/96 -- Standard Case Management Track. (fb) [Entry date 07/05/96]

7/11/96 2 MOTION BY PLAINTIFF JOHN CLEARY FOR APPOINTMENT OF COUNSEL, MEMORANDUM. (ar) [Entry date 07/11/96]

8/2/96 3 ORDER THAT MOTION TO PROCEED IN FORMA PAUPERIS IS DENIED FOR LACK OF COMPLIANCE WITH THE FILING FEE REQUIREMENTS OF THE PRISONER LITIGATION REFORM ACT OF 1995, ETC. (SIGNED BY JUDGE EDMUND V. LUDWIG) 8/5/96 ENTERED AND MAILED. (lvj) [Entry date 08/05/96]

8/2/96 -- Case closed (kv) [Entry date 08/06/96]

9/18/96 4 MOTION BY PLAINTIFF JOHN CLEARY TO PROCEED IN FORMA PAUPERIS . (lvj) [Entry date 09/19/96]

9/30/96 5 MEMORANDUM AND ORDER THAT THE CLERK IS DIRECTED TO CLOSE THIS CIVIL ACTION. IF PLFF FILES WITH THE COURT, WITHIN TWENTY DAYS, A NOTICE THAT HE WISHES TO PROCEED WITH THIS ACTION AND THEREBY OBLIGATE HIMSELF TO PAYMENT OF THE \$120 FILING FEE, THIS ACTION WILL BE REINSTATED. (SIGNED BY JUDGE EDMUND V. LUDWIG) 10/01/96 ENTERED AND COPIES MAILED (lvj) [Entry date 10/01/96] [Edit date 10/01/96]

10/10/96 6 Notice to Proceed by PLAINTIFF JOHN CLEARY (lvj) [Entry date 10/10/96]

11/13/96 7 MEMORANDUM AND ORDER THAT THE CLERK IS DIRECTED TO REINSTATE THIS CIVIL ACTION. PLFF SHALL PAY IN INSTALLMENTS THE FILING FEE OF \$120.00. PLFF IS ASSESSED AN INITIAL PARTIAL FILING AT S.C.I. CRESSON OR AT ANY PRISON AT WHICH PLFF IS OR MAY BE INCARCERATED IS DIRECTED TO DEDUCT \$1.81 FROM PLFF'S INMATE TRUST FUND ACCOUNT, ETC. THE CLERK IS DIRECTED TO FORWARD A COPY OF THIS ORDER TO THE SUPERINTENDENT OF SCI CRESSON. (SIGNED BY JUDGE EDMUND V. LUDWIG) 11/14/96 ENTERED AND COPIES MAILED. (lvj) [Entry date 11/14/96]

3/27/97 8 ORDER THAT: LEAVE TO PROCEED IN FORMA PAUPERIS IS GRANTED. PLFF'S CLAIM THAT HIS CONSTITUTIONAL RIGHTS WERE VIOLATED BY HEARING EXAMINER J.J. WELBY AT HIS INSTITUTIONAL MISCONDUCT HEARING, AND BY SUPERINTENDENT DONALD T. VAUGHN AND DEPUTY SUPERINTENDENT THOMAS D. STACHELEK DURING HIS APPEAL OF HIS MISCONDUCT CONVICTION IS DISMISSED AS LEGALLY FRIVOLOUS. THE CLERK IS DIRECTED TO STRIKE THE NAMES OF SUPERINTENDENT DONALD T. VAUGHN, DEPUTY SUPERINTENDENT THOMAS D. STACHELEK, AND HEARING EXAMINER J.J. WELBY FROM THE CAPTION OF THE COMPLAINT. PLFF'S CLAIM AGAINST DEPUTY SUPERINTENDENT DAVID DIGUGLIELMO IS ALSO DISMISSED AS LEGALLY FRIVOLOUS. THE CLERK IS DIRECTED TO STRIKE THE NAME OF DEPUTY SUPERINTENDENT DAVID DIGUGLIELMO FROM THE CAPTION OF THE COMPLAINT. THE BALANCE OF THE COMPLAINT, IN WHICH PLFF ALLEGES THAT HE WAS BEATEN BY CORRECTIONAL OFFICERS, MAY PROCEED. THE COMPLAINT IS TO BE FILED, THE SUMMONSES ARE TO ISSUE, SERVICE OF THE SUMMONSES AND COMPLAINT IS TO BE MADE UPON CAPTAIN G. SMITH, LT. DENNIS BRUMFIELD, C.O. TIMOTHY LEGRANDE, C.O. HEADEN, C.O. PAJIL, AND C.O. WHITMAN BY THE U.S. MARSHALS SERVICE IN THE EVENT WAIVER OF SERVICE

IS NOT EFFECTED UNDER FED.R.CIV.P. 4(d) (2). THE CLERK OF COURT SHALL ALSO SEND A COPY OF THE COMPLAINT TO THE ATTORNEY REPRESENTING THE CORRECTIONAL INSTITUTION WHERE THE CLAIM IS ALLEGED TO HAVE ARISEN, ETC.. (SIGNED BY JUDGE EDMUND V. LUDWIG) 3/27/97 ENTERED AND COPIES MAILED. (fb) [Entry date 03/27/97]

3/27/97 9 Complaint. (filing fee \$ ifp). (fb) [Entry date 03/27/97]

3/27/97 10 Request for Waiver of Service by PLAINTIFF JOHN CLEARY as to DEFENDANT G. SMITH, DEFENDANT DENNIS BRUMFIELD, DEFENDANT TIMOTHY LEGRANDE, DEFENDANT HEADEN, DEFENDANT PAJIL, DEFENDANT WHITMAN 3/27/97 Waiver of Service due by 4/26/97 for G. SMITH, for DENNIS BRUMFIELD, for TIMOTHY LEGRANDE, for HEADEN, for PAJIL, for WHITMAN. (fb) [Entry date 03/27/97]

3/27/97 -- Notice to Plff RE: waiver of service. (fb) [Entry date 03/27/97]

3/27/97 -- Case reopened (kv) [Entry date 03/28/97]

4/18/97 11 Waiver of Service Returned Executed as to DEFENDANT G. SMITH, DEFENDANT DENNIS BRUMFIELD, DEFENDANT TIMOTHY LEGRANDE, DEFENDANT HEADEN, DEFENDANT PAJIL, DEFENDANT WHITMAN 3/27/97 Answer due on 5/26/97 for WHITMAN, for PAJIL, for HEADEN, for TIMOTHY LEGRANDE, for DENNIS BRUMFIELD, for G. SMITH. (lvj) [Entry date 04/21/97]

5/23/97 12 Answer to Complaint with affirmative defenses and counterclaims by DEFENDANTS, G. SMITH, DENNIS BRUMFIELD, TIMOTHY LEGRANDE, HEADEN, PAJIL and WITMAN (Attorney SUE ANN UNGER), certificate of service. (sj) [Entry date 05/27/97]

5/23/97 -- ISSUE JOINED. (sj) [Entry date 05/27/97]

6/5/97 13 Affidavit of William A. Ross Re: certain facts (lvj) [Entry date 06/05/97]

6/5/97 14 Request by PLAINTIFF JOHN CLEARY to amend original complaint after defts answer (lvj) [Entry date 06/05/97]

6/6/97 15 Affidavit by PLAINTIFF JOHN CLEARY Re: extension of time. (aa) [Entry date 06/09/97]

6/6/97 16 MOTION BY PLAINTIFF JOHN CLEARY FOR APPOINTMENT OF COUNSEL. (aa) [Entry date 06/09/97]

6/11/97 17 Response of Commonwealth Corrections Officials to plff's request for an extension, certificate of service. (lvj) [Entry date 06/12/97]

6/11/97 18 Response of Commonwealth Corrections Officials in opposition to Plff's MOTION FOR APPOINTMENT OF COUNSEL, Memorandum of law in support, certificate of service. (lvj) [Entry date 06/12/97]

6/11/97 19 Response of Commonwealth Corrections Officials in opposition to Plff's Motion to amend complaint, Memorandum of law in support, certificate of service. (lvj) [Entry date 06/12/97]

6/16/97 20 MOTION BY PLAINTIFF JOHN CLEARY FOR RECONSIDERATION OR

REARGUMENT FOR MOTION TO APPOINT COUNSEL, MEMORANDUM. (jef)
[Entry date 06/16/97]

6/17/97 21 Response of Commonwealth Corrections officials in
opposition to Plff's MOTION FOR APPOINTMENT OF COUNSEL,
certificate of service. (lvj) [Entry date 06/18/97]

6/26/97 22 ORDER THAT PLFF' S MOTION TO AMEND COMPLAINT IS DENIED
WITHOUT PREJUDICE TO PLFF'S SUBMITTING A PROPOSED AMENDED
COMPLAINT. BY JULY 25, 1997, PLFF MAY SUBMIT A PROPOSED
AMENDED COMPLAINT FOR CONSIDERATION. PLFF IS GRANTED AN
EXTENSION UNTIL AUGUST 1, 1997 TO RESPOND TO DEFTS'
COUNTERCLAIMS. PLFF SHALL SERVE DEFTS WITH A COPY OF ALL
DOCUMENTS SUBMITTED TO THE COURT, BY MAILING A COPY TO
DEFENSE COUNSEL BY FIRST CLASS MAIL. (SIGNED BY JUDGE
EDMUND V. LUDWIG) 6/27/97 ENTERED AND COPIES MAILED AND
FAXED. (lvj) [Entry date 06/27/97]

6/26/97 -- ORDER THAT MOTION FOR APPOINTMENT OF COUNSEL IS DENIED. (
SIGNED BY JUDGE EDMUND V. LUDWIG) 6/27/97 ENTERED AND
COPIES MAILED AND FAXED. (SEE PAPER #16) (lvj)
[Entry date 06/27/97]

6/26/97 -- ORDER THAT MOTION FOR APPOINTMENT OF COUNSEL IS GRANTED,
ETC. (SIGNED BY JUDGE EDMUND V. LUDWIG) 6/27/97 ENTERED
AND COPIES MAILED AND FAXED. (lvj) [Entry date 06/27/97]
[Edit date 06/27/97]

6/26/97 23 ORDER THAT PLFF'S MOTION FOR APPOINTMENT OF COUNSEL IS
GRANTED. (SIGNED BY JUDGE EDMUND V. LUDWIG) 6/26/97
ENTERED AND COPIES MAILED AND FAXED. (lvj)
[Entry date 06/27/97]

6/27/97 24 MOTION BY PLAINTIFF JOHN CLEARY FOR LEAVE TO AMEND
COMPLAINT . (lvj) [Entry date 06/27/97]

7/7/97 24 Exhibits by PLAINTIFF JOHN CLEARY (lvj)
[Entry date 07/07/97]

7/9/97 25 MOTION BY DEFENDANT G. SMITH, DEFENDANT DENNIS BRUMFIELD,
DEFENDANT TIMOTHY LEGRANDE, DEFENDANT HEADEN, DEFENDANT
PAJIL, DEFENDANT WHITMAN FOR ENLARGEMENT OF TIME ,
CERTIFICATE OF SERVICE. (lvj) [Entry date 07/09/97]

7/18/97 26 Response by of Commonwealth Corrections Officials in
opposition to Plff's MOTION TO AMEND COMPLAINT, Memorandum
of law in support, certificate of service. (lvj)
[Entry date 07/21/97]

7/28/97 27 MOTION BY DEFENDANT CORRECTIONS OFFICIALS FOR
AUTHORIZATION TO DEPOSE PLAINTIFF, MEMORANDUM, CERTIFICATE
OF SERVICE. (gm) [Entry date 07/29/97]

8/4/97 28 Response by PLAINTIFF JOHN CLEARY to defts counterclaims,
memorandum of law in support, certificate of service. (lvj)
[Entry date 08/04/97]

8/19/97 29 Reply of Commonwealth Corrections Officials to Plff's
response to Defts' counterclaims, certificate of service.
(lvj) [Entry date 08/19/97]

8/21/97 30 Supplemental reply of Commonwealth Corrections officials to
Plff's defts' counterclaims, certificate of service. (lvj)
[Entry date 08/22/97]

9/9/97 31 Letter dtd. 8/27/97 from Plff J. Clearly to Kathryn Crispell, courtroom Deputy re: Plff does not oppose deft's motion to depose plff in person or telephonically. (jef) [Entry date 09/09/97]

9/30/97 32 ORDER THAT MOTION OF DEFT CORRECTIONS OFFICIALS FOR AUTHORIZATION TO DEPOSE PLAINTIFF IS GRANTED. MOVANTS SHALL DEPOSE PLFF IN PERSON OR TELEPHONICALLY, AT A STATE CORRECTIONAL INSTITUTION. (SIGNED BY JUDGE EDMUND V. LUDWIG) 9/30/97 ENTERED AND COPIES MAILED AND FAXED. (lvj) [Entry date 09/30/97]

10/20/97 33 Notice of change of address by JOHN CLEARY (lvj) [Entry date 10/20/97]

11/6/97 34 ORDER APPOINTING STEPHEN D. BROWN, MICHAEL S. DOLUISIO, CHRISTOPHER J. CULLETON FOR PLAINTIFF JOHN CLEARY IN THE ABOVE CAPTIONED CASE. THIS APPOINTMENT IS TO REMAIN IN EFFECT UNTIL THE FINAL DETERMINATION OF THIS CASE UNLESS, PRIOR THERETO, IT IS AMENDED OR REVOKED BY ORDER OF COURT. (SIGNED BY JUDGE EDMUND V. LUDWIG) 11/7/97 ENTERED AND COPIES MAILED. (lvj) [Entry date 11/07/97]

11/14/97 -- Scheduling conference set at 11:00 11/25/97. (td) [Entry date 11/17/97]

11/19/97 35 Withdrawal of appearance by CLAUDIA M. TESORO for DEFENDANT G. SMITH, DEFENDANT DENNIS BRUMFIELD, DEFENDANT TIMOTHY LEGRANDE, DEFENDANT HEADEN, DEFENDANT PAJIL, certificate of service. (lvj) [Entry date 11/20/97]

11/25/97 36 TRIAL SCHEDULING ORDER THAT DISCOVERY COMPLETED BY 2/27/98 ; ETC. TRIAL DATE SCHEDULED FOR 3/30/98 ; BY FEB. 27, 1998 PLFF WILL REPORT IN WRITING ON COUNSELS SERIOUS SETTLEMENT EFFORTS. (SIGNED BY JUDGE EDMUND V. LUDWIG) 11/26/97 ENTERED AND COPIES MAILED AND FAXED BY CHAMBERS. (lvj) [Entry date 11/26/97]

11/26/97 37 ORDER THAT PLFF'S MOTION FOR LEAVE TO AMEND COMPLAINT IN ORDER TO VACATE THE WAIVER OF HIS JURY TRIAL RIGHT IS GRANTED. (SIGNED BY JUDGE EDMUND V. LUDWIG) 11/26/97 ENTERED AND COPIES MAILED AND FAXED. (lvj) [Entry date 11/26/97]

11/26/97 38 ORDER THAT DEFTS' MOTION FOR ENLARGEMENT OF TIME IS MOOT. (SIGNED BY JUDGE EDMUND V. LUDWIG) 11/26/97 ENTERED AND COPIES MAILED AND FAXED. (lvj) [Entry date 11/26/97]

12/17/97 39 MOTION BY PLAINTIFF JOHN CLEARY FOR A PROTECTIVE ORDER PURSUANT TO F.R.C.P. 26(c)(5), MEMORANDUM, CERTIFICATE OF SERVICE. (kw) [Entry date 12/17/97]

12/19/97 40 STIPULATION AND ORDER THAT DEFTS MAY HAVE A ONE-WEEK EXTENSION TO RESPOND TO ANY AND ALL MOTIONS FILED BY PLFF IN DECEMBER 1997. (SIGNED BY JUDGE EDMUND V. LUDWIG) 12/22/97 ENTERED AND COPIES MAILED AND FAXED. (lvj) [Entry date 12/22/97]

12/30/97 41 Response by DEFENDANT G. SMITH, DEFENDANT DENNIS BRUMFIELD, DEFENDANT TIMOTHY LEGRANDE, DEFENDANT HEADEN, DEFENDANT PAJIL, DEFENDANT WHITMAN in opposition to PLAINTIFF'S MOTION FOR A PROTECTIVE ORDER, memorandum, certificate of service. (jjc) [Entry date 12/31/97]

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1/9/98 42 ORDER THAT UPON CONSIDERATION OF PLFF'S MOTION FOR A PROTECTIVE ORDER, ETC., IT IS HEREBY ORDERED AND DECREED THAT SAID MOTION IS DENIED WITHOUT PREJUDICE, ETC. (SIGNED BY JUDGE EDMUND V. LUDWIG) 1/12/98 ENTERED AND COPIES MAILED AND FAXED. (gm) [Entry date 01/12/98]

1/14/98 43 MOTION by PLAINTIFF JOHN CLEARY FOR APPOINTMENT OF AN IMPARTIAL MEDICAL EXPERT UNDER FEDERAL RULE OF EVIDENCE 706 , MEMORANDUM, CERTIFICATE OF SERVICE. (jl) [Entry date 01/15/98]

1/20/98 44 Response by COMMONWEALTH CORRECTIONS OFFICIALS in opposition to plff's MOTION FOR A PROTECTIVE ORDER, memorandum, Certificate of Service. (gm) [Entry date 01/21/98]

1/20/98 45 ORDER THAT THE WARDEN OF SCI CAMP HILL PRODUCE BEFORE THIS COURT JOHN CLEARY #BJ4569 ON 3/30/98 AT 10:00 AM BEFORE THE HONORABLE EDMUND V. LUDWIG TO APPEAR FOR JURY TRIAL IN THE ABOVE-CAPTIONED MATTER, ETC.. (SIGNED BY JUDGE EDMUND V. LUDWIG) 1/21/98 ENTERED AND COPIES MAILED. (fb) [Entry date 01/21/98]

2/13/98 46 ORDER THAT PLFF CLEARY'S MOTION FOR A COURT-APPOINTED INDEPENDENT MEDICAL EXPERT IS GRANTED. A QUALIFIED EXPERT WILL BE APPOINTED AS SOON AS PRACTICABLE. TOWARD THAT END, BY FRIDAY, FEBRUARY 20, 1998 THE PARTIES ARE TO SUBMIT A JOINT LIST OF QUALIFIED OPHTHALMOLOGISTS IN THE CAMP HILL, PA. AREA. SET RESPONSE DUE 2/20/98 . (SIGNED BY JUDGE EDMUND V. LUDWIG) 2/13/98 ENTERED AND COPIES MAILED AND FAXED. (gm) [Entry date 02/13/98]

2/23/98 47 (Defts) Joint list of ophthalmologists (signed by counsel), certificate of service. (gm) [Entry date 02/24/98]

3/5/98 48 ORDER THAT DR. DAVID ARMESTO IS APPOINTED BY THE COURT TO SERVE AS AN INDEPENDENT MEDICAL EXPERT, ETC. TRIAL DATE REMAINS 3/30/98. (SIGNED BY JUDGE EDMUND V. LUDWIG) 3/6/98 ENTERED AND COPIES MAILED AND FAXED BY CHAMBERS. (lvj) [Entry date 03/06/98]

3/13/98 49 ORDER THAT THE PARTIES' JOINT STATEMENT OF THEIR RESPECTIVE POSITIONS TOGETHER WITH PLFF'S ENTIRE MEDICAL FILE, ETC., SHALL BE SUBMITTED TO DAVID ARMESTO, M.D., ETC. DR. ARMESTO IS FURTHER REQUESTED TO SEND THE COURT A REPORT SETTING FORTH HIS OPINIONS RELATING TO PLFF JOHN CLEARY'S ALLEGED EYE CONDITION AND, IF ABNORMAL, THE CAUSE OR CAUSES OF SUCH CONDITION. TRIAL: MARCH 30, 1998. (SIGNED BY JUDGE EDMUND V. LUDWIG) 3/16/98 ENTERED AND COPIES MAILED AND FAXED. (lvj) [Entry date 03/16/98]

3/17/98 -- Settlement conference SET on 2:30 3/24/98 in chambers room 12614, etc. (lvj) [Entry date 03/18/98]

3/20/98 50 Notice of change of address by JOHN CLEARY (lvj) [Entry date 03/20/98]

3/20/98 51 Joint Pretrial Memorandum, certificate of service, filed. (lvj) [Entry date 03/23/98]

3/23/98 52 MOTION BY PLAINTIFF JOHN CLEARY IN LIMINE TO EXCLUDE CERTAIN PREJUDICIAL EVIDENCE, MEMORANDUM, CERTIFICATE OF SERVICE. (fb) [Entry date 03/24/98]

- 3/24/98 53 MOTION BY DEFENDANT G. SMITH, DEFENDANT DENNIS BRUMFIELD, DEFENDANT TIMOTHY LEGRANDE, DEFENDANT HEADEN, DEFENDANT PAJIL, DEFENDANT WHITMAN IN LIMINE , CERTIFICATE OF SERVICE. (lvj) [Entry date 03/25/98]
- 3/24/98 54 Defendants' Amendment to Joint Pretrial Memorandum, Certificate of Service. (lvj) [Entry date 03/25/98]
- 3/26/98 55 Plff's Amendments to exhibit list in parties' joint pretrial memorandum (lvj) [Entry date 03/26/98]
- 3/31/98 56 ORDER THAT AUTHORIZATION IS GIVEN FOR THE PAYMENT OF EXPERT FEES OF DR. DAVID ARMESTO IN THE AMOUNT OF \$500 TO PREMIER EYE CARE GROUP, INC. THE CLERK OF COURT IS DIRECTED TO SUBMIT A COPY OF THIS ORDER AND ATTACHED INVOICE TO THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS FOR PAYMENT. (SIGNED BY JUDGE EDMUND V. LUDWIG) 4/1/98 ENTERED AND COPIES MAILED AND FAXED. (lvj) [Entry date 04/01/98]
- 3/31/98 57 Proposed Jury instructions by DEFENDANT G. SMITH, DEFENDANT DENNIS BRUMFIELD, DEFENDANT TIMOTHY LEGRANDE, DEFENDANT HEADEN, DEFENDANT PAJIL, DEFENDANT WHITMAN, certificate of service. (lvj) [Entry date 04/01/98]
- 3/31/98 58 Minute entry dated 3/30/98 re: civil jury trial; jurors called, voir dire, selected; jurors sworn; plff and deft opening statements; (lvj) [Entry date 04/01/98]
- 4/1/98 59 Minute entry dated 3/31/98 re: civil jury trial; deft's motion for judgment as a matter of law - granted as to some defts; witnesses sworn (lvj) [Entry date 04/02/98]
- 4/1/98 60 ORDER THAT THE CLERK OF COURT FOR THE EASTERN DISTRICT OF PA BE AND HE IS HEREBY DIRECTED TO FURNISH LUNCH FOR JURORS AND ONE DEPUTY CLERK ENGAGED IN THE ABOVE ENTITLED CASE. (lvj) [Entry date 04/02/98]
- 4/2/98 61 Defts' Proposed Jury Interrogatories , certificate of service. (lvj) [Entry date 04/03/98]
- 4/3/98 62 Minute entry dated 4/1/98 re: trial resumes; witnesses sworn; deft's renewed motion for judgment as a matter of law; plff and defts closing; plff's rebuttal; judge's charge to jury who retire to deliberate; jury question answered on the record; verdict recorded; jurors dismissed. (lvj) [Entry date 04/03/98]
- 4/3/98 63 Questions to jurors and answers thereof. (lvj) [Entry date 04/03/98]
- 4/3/98 64 ORDER THAT JUDGMENT AS A MATTER OF LAW IS GRANTED IN FAVOR OF DEFTS CORRECTIONS OFFICER PAHIL AD CORRECTIONS OFFICER WHITMAN. THESE TWO DEFTS ARE DIMSISSED FROM FURTHER PROCEEDINGS IN THIS ACTION. (SIGNED BY JUDGE EDMUND V. LUDWIG) 4/3/98 ENTERED AND COPIES MAILED AND FAXED BY CHAMBERS. (lvj) [Entry date 04/03/98]
- 4/3/98 65 ORDER THAT JUDGMENT BE AND THE SAME IS HEREBY ENTERED IN FAVOR OF DEFTS SMITH, BRUMFIELD, LEGRANDE, HEADEN, AND AGAINST THE PLFF. ON THE COUNTERCLAIMS JUDGMENT IS ENTERED IN FAVOR OF JOHN CLEARY, AND AGAINST CORRECTIONAL OFFICER BRUMFIELD AND LEGRANDE. NO MONEY DAMAGES ARE AWARDED. (

SIGNED BY JUDGE EDMUND V. LUDWIG) 4/3/98 ENTERED AND
COPIES MAILED AND FAXED BY CHAMBERS. (lvj)
[Entry date 04/03/98]

4/3/98 -- Case closed (kv) [Entry date 04/07/98]

5/21/98 66 Bill of costs by DEFENDANT G. SMITH, DEFENDANT DENNIS
BRUMFIELD, DEFENDANT TIMOTHY LEGRANDE, DEFENDANT HEADEN,
DEFENDANT PAJIL, DEFENDANT WHITMAN , Certificate of
Service. (krl) [Entry date 05/21/98]

5/26/98 67 MOTION by PLAINTIFF JOHN CLEARY TO DENY COSTS ,
MEMORANDUM, CERTIFICATE OF SERVICE. (krl)
[Entry date 05/27/98]

5/27/98 68 Response by DEFENDANT G. SMITH, DEFENDANT DENNIS BRUMFIELD,
DEFENDANT TIMOTHY LEGRANDE, DEFENDANT HEADEN to Plff's
MOTION TO DENY COSTS , Certificate of Service. (lvj)
[Entry date 05/28/98]

7/23/98 69 Clerk's taxation of costs. 7/24/98 ENTERED AND COPIES
MAILED AND FAXED. (lvj) [Entry date 07/24/98]

7/23/98 70 ORDER THAT JUDGMENT IS ENTERED FOR DONALD T. VAUGHN, THOMAS
D. STACHELEK, DAVID DIGUGLIELMO, J. J. WELBY, G. SMITH,
DENNIS BRUMFIELD, TIMOTHY LEGRANDE, HEADEN, PAJIL, WHITMAN
AGAINST JOHN CLEARY FOR \$1,417.10. 7/24/98 ENTERED AND
COPIES MAILED AND FAXED. (SIGNED BY JUDGE EDMUND V. LUDWIG
) (lvj) [Entry date 07/24/98]

7/30/98 71 Appeal by PLAINTIFF JOHN CLEARY from Clerk's Taxation of
Costs, memo, cert. of service. (jef) [Entry date 07/31/98]

7/31/98 72 Response by DEFENDANT G. SMITH, DEFENDANT DENNIS BRUMFIELD,
DEFENDANT TIMOTHY LEGRANDE, DEFENDANT HEADEN to plff's
appeal from the clerk's taxation of costs, Certificate of
Service. (mc) [Entry date 08/03/98]

8/13/98 73 ORDER THAT THE CLERK'S TAXATION OF COSTS IS AFFIRMED. (
SIGNED BY JUDGE EDMUND V. LUDWIG) 8/14/98 ENTERED AND
COPIES MAILED AND FAXED. (lvj) [Entry date 08/14/98]

12/7/99 -- Filing Fee Paid; filing fee \$ 3.12 receipt # 718544 (ajf)
[Entry date 12/07/99]

1/13/00 -- Partial Filing Fee Paid; filing fee \$ 2.58 receipt #
721386 (ajf) [Entry date 01/14/00]

Case Flags:
f-STND
CLOSED

END OF DOCKET: 2:96cv4805

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| PACER Login: | cc0489 | Client Code: | |
| Description: | docket report | Search Criteria: | 2:96cv04805 |
| Billable Pages: | 12 | Cost: | 0.84 |

APR-03-2001 16:22

267 299 7135 P.02/11

EL**9**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN CLEARY,
Plaintiff

v.

DONALD T. VAUGHN, Superintendent
THOMAS D. STACHELEK, Deputy Superintendent
and DAVID DIGUGLIELMO, his successor in office
J.J. WELBY, Hearing Examiner,
G. SMITH, Correctional Officer Captain
DENNIS BRUMFIELD, Correctional Officer Lt.
TIMOTHY LEGRANDE, Correctional Officer,
CORRECTIONAL OFFICER HEADEN,
CORRECTIONAL OFFICER PAJIL,
CORRECTIONAL OFFICER WHITMAN,
State Correctional Institution at Graterford,
Post Office Box 244, Graterford, PA 19426,
Defendants

CIVIL ACTION

FILED

MAR 27 1997

MICHAEL E. KUNZ, Clerk

NO. 96-CV-482

I. COMPLAINT

This is a § 1983 action filed by John Cleary, a state prisoner, alleging violations of his constitutional rights by the below named defendants who have acted under the color of state law. Defendants are being sued individually and in his official capacities. Plaintiff seeks monetary awards compensatory and punitive damages in excess of the court's jurisdiction amount. as prescribed by law.

II. JURISDICTION

This action is authorized by 42 U.S.C. § 1983 to address the deprivations under the color of state law, rights secured by the Constitution of the United States. This court's jurisdiction is invoked pursuant to 28 U.S.C. § 1343 and relief requested is authorized by 28 U.S.C. §§ 2201, 2202.

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III. PLAINTIFF

1. Plaintiff, John Cleary, is United States citizen and resident of the Commonwealth of Pennsylvania, and is currently incarcerated at State Correctional Institution at Graterford (Graterford) under court imposed sentence.

IV. DEFENDANTS

2. Donald T. Vaughn, is and was at all times relevant to action, superintendent at Graterford. As superintendent, he is legally responsible for all officers and inmates at all times mentioned in this complaint.

3. Thomas D. Stachelek, is and was at all times relevant to this complaint, deputy superintendent, and is legally responsible for all staff and inmates under the superintendent.

4. David DiGuglielmo, (now deputy superintendent) Thomas D. Stachelek's successor in office, is and was at all times in this action, legally responsible for all staff and inmates under the superintendent.

5. J.J. Welby, is and was at all times herein this action, hearing examiner, and is legally responsible for conducting inmate misconduct hearings for infractions of Department of Corrections rules and regulations.

6. C. Smith, is and was at all times relevant to this action, captain of the corrections officers and is legally responsible for all lieutenants, sergeants, and corrections officers.

7. Dennis Brumfield (now captain), is and was at all times relevant to this action, corrections officer lieutenant, and is

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267 299 7135 P.04/11

legally responsible for the actions of subordinate officers.

8. Timothy LeGrande, corrections officer is and was at all times relevant to this complaint, an employee at Graterford.

9. Corrections Officer Headen, is and was at all times relevant to this complaint, an employee at Graterford.

10. Correction Officer Pajil, is and was at all times relevant to this action, an employee at Graterford.

11. Corrections Officer Whitman, is and was at all times relevant to this complaint, an employee at Graterford.

V. FACTS

12. On November 29, 1995 at approximately 09:15, plaintiff was returning from the exercise yard and was going to C block housing unit with Todd Mack, AY 8427.

13. Because his cellmate was on cell restriction¹ and the cell door doubled-locked, plaintiff went to the block bridge control center to find his section officer to open his cell.

14. Plaintiff saw Defendant LeGrande approximately 10 cells from his cell, which is numbered cell 23.

15. LeGrande approached plaintiff and asked him "Where do you live.?"

16. LeGrande further asked "What the fuck are doing back here?", and plaintiff told LeGrande that he was looking for an officer to let him into his cell.

1. Inmates on cell restriction are double-locked and feed in their cells 22 hours daily. Cell mates who are in general population must be keyed in and out for any and all activities. In order to gain access, a section officer must be called to key the cellmate in or out the cell depending upon the cellmate's work schedule and other activities.

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17. LeGrande then hollered to Lt. Brumfield who was sitting on bridge and said "Look what we got here," and Lt. Brumfield responded and said "Looks like we got one to go.!"

18. Defendant LeGrande then ordered plaintiff to go the bridge, and plaintiff went to the bottom of the staircase which leads to the top of the bridge located on the second tier.

19. Lt. Brumfield was descending the stairs and plaintiff then backed down the stairs, but his retreat was blocked by Defendant LeGrande who was standing behind him.

20. Lt. Brumfield then asked plaintiff for his I.D. card, and plaintiff told him it was locked in his cell.

21. Both Lt. Brumfield and LeGrande escorted plaintiff to his cell and when they arrived, the cell was searched and upon completion, Lt. Brumfield ordered plaintiff handcuffed.

22. Plaintiff was then escorted to the Day Captain's Office (DOC) and Defendants Captain C. Smith and Defendants Headen, Pajil and Whitman were there.

23. When plaintiff entered the DOC, Lt. Brumfield then squared off nose-to-nose with plaintiff who was still handcuffed.

24. Lt. Brumfield then said "What's up now, tough guy? say something now!" However, plaintiff remained silent.

25. Lt. Brumfield ordered Defendant LeGrande to remove the handcuffs and once removed, Brumfield goaded plaintiff to "Take a swing" i.e. take punch at him.

26. Plaintiff refused, however.

27. Defendant C/O Headen said, "It doesn't matter. He's still going to taste some brass today." i.e. the brass keys

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officers use throughout the prison.

28. Brumfield stepped toward plaintiff and said, "You're a bitch" and then feigned a punch causing him to take a step backwards.

29. Defendant LeGrande, without provocation, punched plaintiff in his right eye, which knocked him to the floor.

30. Defendants LeGrande, Pajil, Whitman kicked, punched and beat plaintiff with clubs while Captain Smith watched for several minutes and then said "Okay fellows, he's had enough."

31. During the beating, plaintiff was handcuffed again by Defendants Pajil and Whitman while he remained on the floor.

32. Plaintiff was issued a misconduct for an assault on staff and various other minor charges first, and then arrested by State Policeman Thomas M. Gilhool of the Limerick Barracks and charged with an assault by prison pursuant to 18 Pa.C.S. § 2703.

33. On March 11, 1996 plaintiff appeared before the Honorable Albert J. Augustine, District justice and was acquitted of all charges. (See Exhibit A.

34. Plaintiff, however, at his misconduct hearing was found guilty of assault on staff and was given 90 days disciplinary custody in Restrictive Housing Unit (RHU) on December 5, 1995, where he remains to date awaiting transfer to another state facility as yet unknown.

35. Defendant J.J. Welby's decision was timely appealed to the Program Review Committee (PRC), which affirmed his actions.

36. A timely appeal was then filed with Defendant Vaughn, who failed to reply within 3 days pursuant to DC AMD 801 I. 2.(c)

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(Department of Corrections Administrative Directive Inmate Disciplinary and Restrict Housing Procedures, Appeals.

37. Plaintiff then contacted Defendant Stachelek a letter asking him for relief, but was instructed to use the Misconduct appeal system described in averment 36, supra. See Exhibits B and C.

38. A grievance was filed with Mary Anne Williams, grievance officer (coordinator) on November 30, 1995, but received no reply. See Exhibit D.

40. Plaintiff then filed a grievance with Martin F. Horn, Commissioner, Department of Corrections on November 30, 1995.

41. In response to plaintiff's grievance Mr. Horn sent Mr. Ernest Macon, Jr., to investigate and take an official statement from plaintiff on January 24, 1996. See Exhibit E.

42. In the interim, plaintiff filed a request with PRC members, i.e. Major John Miller, et al, asking release from disciplinary custody on April 28, 1996 and May 16, 1996 respectively.

43. The April and May 1996 requests for release from disciplinary custody was summarily denied. See Exhibit F and G.

VI. LEGAL CLAIMS

44. The actions of officers used was excessive force and malicious physical force to punish plaintiff; to deprive him of the right to be free cruel and unusual punishment.

45. The acts of defendants deprived plaintiff the right to be released from disciplinary confinement after charges were dismissed by a court of law.

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46. The acts of defendants deprived plaintiff his right to due process and equal protection of law guaranteed by 14th Amendment he has no remedy at law expect through this court.

VII. CAUSES OF ACTION

47. Defendant Donald T. Vaughn violated plaintiff's due process and equal protection of law rights by refusing to address plaintiff's appeal of his misconduct, and in violation of Department of Corrections ADM 801 which requires the superintendent to address appeals within 3 days receipt of the appeal.

48. Defendant Stachelek violated plaintiff's due process and equal protection of law rights by refusing to address plaintiff's letters and appeal of his misconduct.

49. Defendant Welby violated plaintiff's right due process and equal protection of law by conducting a disciplinary hearing with the knowledge that Defendants had filed formal criminal charges in the Court of Common Pleas for Montgomery County.

50. Defendants Smith, violated plaintiff's right to be free of cruel and unusual punishment by acquiescence of duty by permitting Defendants Brumfield, Headen, Pajil and Whitman to punch, kick, and beat plaintiff with clubs in an unprovoked attack in the DCO.

51. Defendants Brumfield, Headen, Pajil and Whitman violated plaintiff's 8th Amendment right to be free from cruel and unusual punishment in their unprovoked attack on plaintiff in the DCO, which caused serious internal and external injuries to his right eye, which required extensive medical treatment.

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52. Defendants Brumfield, Headen, Pajil and Whitman violated plaintiff's 8th and 14 Amendment rights when they filed a false misconduct alleging an assault on staff, and further compounded their actions by filing false criminal charges of assault in state court.

VIII. RELIEF SOUGHT

53. Plaintiff seeks the following relief:

(a) that this court declare all named Defendants' actions violated plaintiff's rights secured by the 8th and 14th Amendments to the United States Constitution;

(b) Plaintiff seeks compensatory awards for damages from Lt. Brumfield, C/Os Headen, Pajil and Whitman individually and severally in the amount of \$100,000 for their unprovoked attack and subsequent beating and injuries;

(c) Plaintiff seeks punitive awards for damages from Defendants Lt. Brumfield, C/Os Headen, Pajil and Whitman individually and severally in the amount of \$100,000 for their unprovoked attack and subsequent beating and injuries;

(d) Plaintiff seeks compensatory damages from Defendant Captain C. Smith, for acquiescing his duty by permitting Defendants Brumfield, Headen, Pajil and Whitman to carry out their unprovoked attack against him.

(e) Plaintiff seeks punitive damages from Defendant Captain C. Smith for for acquiescing his duty by permitting Defendants Brumfield, Headen, Pajil and Whitman to carry out their unprovoked attack against him causing serious eye injuries.

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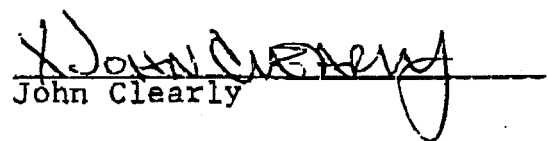
(f) Plaintiff seeks compensatory awards for damages from each Defendant individually and severally in the amount of \$50,000 from Defendant Vaughn for refusing to review plaintiff's appeal from the decision of the Program Review Committee; from Defendant Stachelek for refusing to address his letter requesting relief.

(g) Plaintiff seeks compensatory awards for damages from Defendant Welby in the amount of \$50,000 (i) for conducting a misconduct hearing with the knowledge that Defendants Brumfield, Headen, Pajil and Whitman had filed formal criminal charges against him, (ii) finding plaintiff guilty without substantive evidence at plaintiff's misconduct hearing.

(h) Plaintiff seeks exemplary awards for damages from each defendant individually and severally in the amount of \$50,000 for deprivations of civil and constitutional rights.

(i) Plaintiff further requests any other relief the court deems just and equitable.

Respectfully submitted,

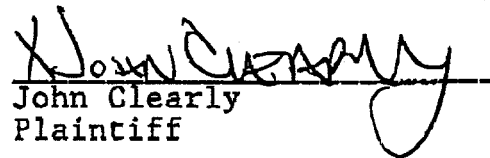

John Clearly

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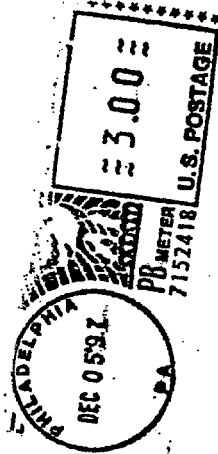
VERIFIED STATEMENT

I, JOHN CLEARLY, hereby depose and say pursuant to 18 U.S.C. § 10001, that all the foregoing the facts and statements are true and correct to the best of his knowledge, information and belief. He further states that this action is not dilatory and that he believes he is, according to law, entitled to the relief he seeks.


John Clearly
Plaintiff

Date: 4/26/96

3



E

Dechert Price & Rhoads

4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, Pennsylvania
19103-2793

Mr. John Cleary
DF 5779
P. O. Box 200
Camp Hill Prison
Camp Hill, PA 17001-0200

PERSONAL AND CONFIDENTIAL - ATTORNEY-CLIENT
PRIVILEGE

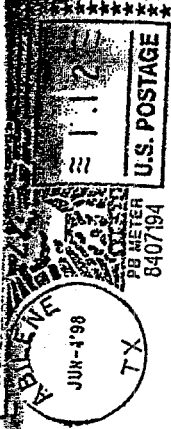
Warrant # 931

2

EXHIBIT

Rain 10-23-01
York Steno Svcs.





LIBRARY RATE

THE HOUSE OF YAHWEH

The Pillar and Ground of the Truth, 1 Timothy 3:15
P.O. Box 2498
Abilene, TX 79604

TO:

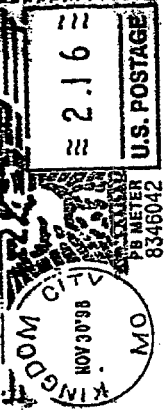
J CLEARY #DF5779
P O BOX 200
CAMP HILL PA 17001-0200

RELIGIOUS MATERIAL
DIRECT FROM PUBLISHER

RELIGIOUS MATERIAL
DIRECT FROM PUBLISHER

Wayne
#869

3
EXHIBIT
Ray 10-23-01
York Steno Svcs.



FIRST CLASS MAIL

Yahweh's Most Covenant Assembly
Kingdom City, MO 65262

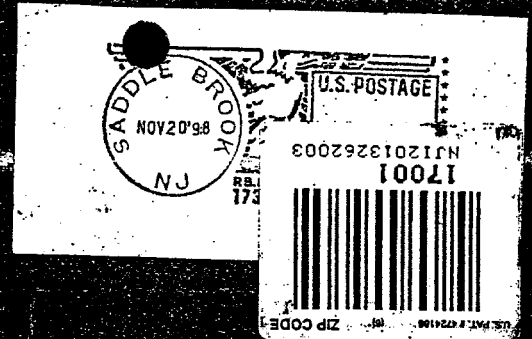
J. Cleary DFS779
1500 Lisburn Rd.
PO Bx. 200
Camp Hill, PA 17001-0200

✓

#904

Wahyamat





From: Hizmet Religious Books, Inc.

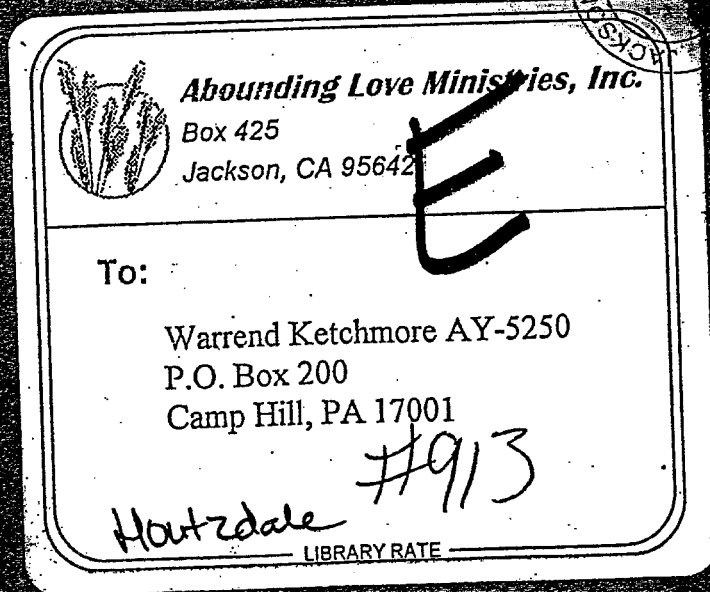
P.O.Box: 916 Saddle Brook, NJ 07663

This Package contains Religious Books. #: 1,7,8,9

To: J. Cleary #DF5779

P.O. Box 200

Camp Hill, PA 17001-0200



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CLEARY,

Plaintiff,

v.

KENNETH KYLER, et al.,

Defendants

Civil Action No. 1:CV-00-2125

(Judge Caldwell)

DECLARATION OF KENNETH D. KYLER

I, Kenneth D. Kyler, hereby declare under penalty of perjury that the following statements are true and correct based upon my personal knowledge and belief:

1. I am currently employed by the Pennsylvania Department of Corrections at the Superintendent at the State Correctional Institution at Huntingdon ("SCI-Huntingdon"). I have held that position since January 9, 2000. Prior to that, I was Superintendent of the State Correctional Institution at Camp Hill ("SCI-Camp Hill"), starting in July of 1995.

2. As Superintendent of SCI-Camp Hill, I was the administrative head of the institution there. There were two Deputy Superintendents who reported directly to me. I did not normally get involved in the day-to-day operations of the individual housing units at SCI-Camp Hill, including the Special Management Unit ("SMU").

3. As part of my duties, I considered inmates' appeals from responses to inmate grievances, under Department Policy DC-ADM 804. On appeal, the Superintendent may approve, disapprove, modify, reverse, remand or reassign for further fact finding the initial review decision made in response to the inmate's grievance.

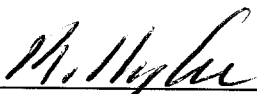
4. According to the records at SCI-Camp Hill, inmate John Cleary, DF-5779, filed an inmate grievance on April 13, 2000, which grievance was assigned No. CAM-0260-00. In that grievance, Cleary complained that his legal, religious and personal mail had been withheld

for a period of one to two years and that this deprived him of access to the courts as well as access to information vital to his religious beliefs and practices. On April 20, 2001, Business Manager Robert Gimble responded to his grievance by stating in part: "Cleary, it should not have taken this long for the mail you referenced to reach you. We apologize for any inconvenience this may have caused."

5. Cleary appealed Gimble's response. However, I was no longer the Superintendent at SCI-Camp Hill at that time and the appeal was addressed by my successor, Superintendent Martin L. Dragovich. On July 5, 2000, Superintendent Dragovich denied the appeal as untimely. Inmate Cleary subsequently appealed the denial to final review. On July 31, 2001, Chief Hearing Examiner Robert S. Bitner, denied the appeal to final review. True and correct copies of Inmate Grievance CAM-0260-00, the official response and subsequent appeals are attached hereto and marked Exhibit "A."

6. I have had no personal contact with the Plaintiff concerning the delay in his mail. I also was in no way responsible for the delay in the Plaintiff's legal and religious mail. There was an investigation by the Security Office at SCI-Camp Hill into the delay in delivery of inmate mail, which discovered numerous boxes of undelivered inmate mail. The Security Office recommended that the Mailroom Supervisor, Howard Imschweiler, be given a Pre-Disciplinary Conference, which was done. Mr. Imschweiler was subsequently terminated.

Executed this 2nd day of
December, 2001



Kenneth D. Kyler
Superintendent
SCI-Huntingdon

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
1451 N. MARKET STREET
ELIZABETHTOWN, PA 17022

OFFICE OF THE
CHIEF HEARING EXAMINER

July 31, 2000

John Cleary, DF-5779
SCI Pittsburgh

Re: DC-ADM 804 - Final Review
Grievance No. CAM-0260-00

Dear Mr. Cleary:

This is to acknowledge receipt of your appeal to final review of the above numbered grievance.

In accordance with the provisions of DC-ADM 804, VI D, as amended effective November 1, 1997, I have reviewed the entire record of this grievance; including your initial grievance, the Grievance Officer's response, your appeal from initial review and the Superintendent's response. I have also carefully reviewed the issues you raise to final review.

Upon completion of this review, it is the decision of this office to uphold the responses provided by staff at the institutional level. I find the issues raised for final review have been addressed by the Grievance Coordinator and the Superintendent, and their responses are reasonable and appropriate.

I concur with the responses already provided at the institution level. Accordingly, your appeal to final review must be denied.

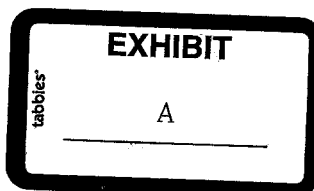
Sincerely,



Robert S. Bitner
Chief Hearing Examiner

RSB:bjk

pc: Superintendent Johnson
Superintendent Dragovich



VIP

FINAL REVIEW
DC-ADM 802, 804 AND 814

INMATE NAME: JOHN CLEARY

INMATE DOC ID #: DF-5779

PRESENT SCI: PITTSBURGH * (JOHNSON)

GRIEVANCE #: CAM-0260-00 * CAMP HILL - DRAGONCH
FAX BOTH

DISPOSITION:

While at Waymart, ~~the~~ Cleary received a package of old mail (postmark 12/97 to 8/98) from Camp Hill. He believes Camp Hill intentionally withheld his mail from him, violating his legal/religious rights. Why did Cleary wait 4 months to file this grievance? Nonetheless, Camp Hill did not "intentionally" hold Cleary's mail. There was a mailroom incident and bundles of old mail were found. As soon as the problem was discovered, the mail was forwarded to all the inmates. It was nothing personal towards any one inmate. Camp Hill did their best to resolve the situation. *H. J. [unclear] 09-28-00*
 another grievance from the Camp Hill mail room incident. Uphold I met, *Updell*
 per Randy [unclear]

July 14, 2000

J. Cleary DFST79
Box 9990,
Pittsburgh, Pa 15233

Chief Hearing Examiner

1451 S. Market st.

Elizabethtown, Pa 17022

OFFICE
OF THE

JUL 19 2000

RE: DCADM 804 # CAM-0260-00 CHIEF
HEARING EXAMINER

Dear Hearing Examiner,

This appeal is filed in response to the superintendent of Camphill. I requested an extension of time pursuant to DCADM 804-4 (May 1, 1998). As explained in my appeal to superintendent, I had believed that the Camphill mail room supervisor, Howard Inschweiler had violated my 1st & 14th amendment rights by withholding my mail for 23 months, and it took several weeks to schedule a library slot in accordance with the S.C.I. Pittsburgh rules, and the research time necessary to identify a violation of my constitutional rights by Howard Inschweiler, and whether or not to pursue this if indeed I had found a violation of my rights.

With all due respect to this office, as a good faith effort to resolve this matter without the federal courts, I request \$10,000.00 as compensation for damages incurred, as noted in the record of this grievance.

cc: NTC/vel
File

Sincerely

[Signature]

J. Cleary

COMMONWEALTH OF PENNSYLVANIA
State Correctional Institution at Camp Hill

DATE: July 5, 2000

SUBJECT: Appeal to Superintendent
Grievance No. CAM-0260-00

TO: John Cleary
DF-5779
SCI-Pittsburgh

FROM: *Martin L. Dragovich*
Martin L. Dragovich
Superintendent

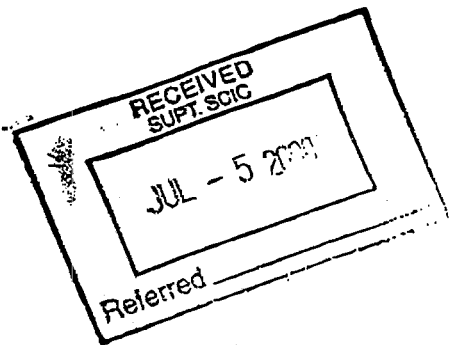
Receipt of your Appeal to Superintendent of Grievance CAM-0260-00 is acknowledged. In preparing this response, I have reviewed your original grievance, the grievance officer's response, and your appeal to this office.

Your request to have a grievance appeal extension granted in this matter is denied. While DC-ACM 804 allows for an extension for good reason, you have provided none. Your first level response from the Business Manager is dated April 20 and it is now July 5. Absent any compelling reason to grant you an extension, your request must be denied. Additionally, please note that I am not in a position to grant you the compensation you have requested in the amount of \$10,000 for not receiving your mail in a timely fashion.

Based on the foregoing, your appeal is denied.

MLD/lp

cc: Deputy Novotney
Deputy Palakovich
Mr. Livingood
Mr. Gimble
DC-15
File - CAM-0260-00



June 29, 2000

J. Cleary *DFS779
Box 99901
Pittsburgh, Pa 15233

Kenneth Kyler; Superintendent
2500 Lisburn Rd, Box 200
Camphill, Pa 17001-0200

RE: Grievance *CAM-0260-00.

Mr. Kyler,

I would like to appeal this initial grievance decision to your office upon approval from the Facility Manager/Regional Director for an extension of time for appeal as specified in DCADM 804-4 effective May 1, 1998.

I have reason to believe that a violation of my 1st and 14th amendment rights were violated by your mail room supervisor, Mr. Howard Imschweiler, who intentionally, and maliciously withheld my legal mail for 23 months, and I lost a decision in my civil action as a result of Mr. Imschweiler withholding my legal mail. I had a substantial stake in the outcome of my civil action, which I've lost as a direct result of Mr. Imschweiler's actions.

June 29, 2000

Kenneth Kyler

Page 2


As a good faith effort to ~~resolve~~ resolve this matter without the federal courts, I request that I would receive \$10,000.00 as compensation for damages caused by my not receiving my legal mail for 23 months past the postmark.

Please render a fair and just decision in this manner.

Sincerely
X ~~John Cleary~~
John Cleary

cc: NTC/vcl.

Regional Director
file

| | | | |
|---|---|--|------------------|
| DC-304 Part II, A Official Inmate Grievance - Review by Grievance Officer Complaint File Number Assigned by Grievance Officer | RECEIVED SUPT. SCIC APR 20 2000 Referred _____ COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS P.O. BOX 598 CAMP HILL, PA 17001 | ATTACHMENT #4 CAM 0260-00 | |
| To: Number DF 5779 | Name JOHN CLEARY | Quarters Assignment SCI-ALBION | Date 04/13/00 |
| This complaint has been reviewed. Below is a summary of my review and/or investigation and recommendations. Objections may be filed with the Superintendent within five (5) days. | | | |
| <p>CLEARLY, IT SHOULD NOT HAVE TAKEN AS LONG FOR THE MAIL YOU REFERENCED TO REACH YOU. WE APOLOGIZE FOR ANY INCONVENIENCE THIS MAY HAVE CAUSED.</p> <p>THE SITUATION HAS BEEN REVIEWED AND ALL INMATE MAIL THAT COULD BE DELIVERED HAS BEEN DELIVERED. YOUR PARTICULAR SITUATION WAS COMPOUNDED BY WRIT MAIL THAT WAS NOT FORWARDED CORRECTLY. WE HOPE TO AVOID A RECURRENCE OF THIS SITUATION IN THE FUTURE.</p> <p><i>Dragovich</i> <i>Dups</i> <i>Grimble</i> <i>Inmate</i> <i>Cent 15</i></p> | | | |
| | | Signature of Grievance Officer  | Date 04/20/00 |

DC-804
PART 1RECEIVED
SCI-PITTSBURGH

APR 10 2000

SUPERINTENDENT
ASSISTANT IICOMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONSP.O. BOX 598
CAMP HILL, PA. 17001-0598
APR 17 2000

OFFICIAL INMATE GRIEVANCE

GRIEVANCE NO. *Gimble*
CAM-0260-00

| | | |
|---|--|----------------|
| TO: GRIEVANCE COORDINATOR <i>[Signature]</i> Ben Livingood | INSTITUTION S.C.I. Camp Hill | DATE 4/9/00 |
| FROM: (Commitment Name & Number) John Cleary DF5779 | INMATE'S SIGNATURE <i>[Signature]</i> | |
| WORK ASSIGNMENT B1K | QUARTERS ASSIGNMENT B1B1018 | |

INSTRUCTIONS:

1. Refer to the inmate handbook Page 12 and DC-ADM 804 for information on the inmate grievance system.
2. State your grievance in Block A in a brief and understandable manner.
3. Next, you are required to list in Block B the specific actions you have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.

A. Brief, clear statement of grievance:

While at F.T.C. Waymart, I had received 1 pkg of legal mail postdated 12/5/97, 3 pkgs of religious books, postdated 6/4/98, 8/20/98, and 11/23/98, and a personal letter, postdated 8/14/98. I received this mail in November 1999, and December 1999, after a transfer petition was submitted for me to Pittsburgh. Camp Hill had intentionally withheld my legal, religious, and personal mail for a time span of one to two years, and deprived me access to the courts, access to information vital to my religious beliefs & practices, and denied me correspondence with my immediate family members, by not delivering my mail to me in a timely manner.

B. Actions taken and staff you have contacted before submitting this grievance:

I wrote a letter to Kenneth Kyler, Superintendent at Camp Hill, and have received no response.

Your grievance has been received and will be processed in accordance with DC-ADM 804.

[Signature]
Signature of Grievance Coordinator

4/17/00
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CLEARY,

Plaintiff,

v.

KENNETH KYLER, et al.,

Defendants

Civil Action No. 1:CV-00-2125

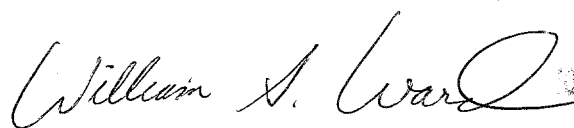
(Judge Caldwell)

DECLARATION OF WILLIAM S. WARD

I, William S. Ward, hereby declare under penalty of perjury that the following statements are true and correct based upon my personal knowledge and belief:

1. I am currently employed by the Pennsylvania Department of Corrections at the State Correctional Institution at Camp Hill ("SCI-Camp Hill") as the Unit Manager of A & B Block. I have held that position since May, 2000. Prior to that, I was the Unit Manager of the Special Management Unit ("SMU"), which position I held from January, 1995.
2. I am familiar with inmate John Cleary, DF-5779. Cleary was housed in the SMU at SCI-Camp Hill, while I was the Unit Manager there.
3. Cleary often complained to me about his mail being delayed while he was at SCI-Camp Hill. However, I was not personally involved in the delivery of inmate Cleary's mail at SCI-Camp Hill, nor did I delay his mail in any way. I understand that there was an investigation into this matter and an employee in the mail room at SCI-Camp Hill was terminated as a result.
4. At no time did I interfere with the Plaintiff's access to the courts or his right to practice his religion.

Executed this 11th day of
December, 2001



William S. Ward
Unit Manager
SCI-Camp Hill

1
2
3
4
5 JOHN CLEARY, :
6 :
7 Plaintiff : Civil Action No. 1:CV-00-2125
8 vs. :
9
10 KENNETH KYLER, et al :
11 :
12 Defendants :
13

14 TRANSCRIPT OF PROCEEDINGS
15 taken on
16 October 23, 2001
17 at 1 Kelly Drive
18 Coal Township, Pennsylvania
19
20

21 APPEARANCES:
22
23 JOHN CLEARY
24 Appearing Pro se
25
26 RAY DORIAN, ESQUIRE
27 On behalf of the Department of Corrections
28

29 Reported by:
30 Ralph Keffer,
31 Official Court Reporter
32
33

1 A. Yes.

2 Q. Okay.

3 A. 14 or 15. I'm not sure but right around
4 there.

5 Q. Did you ever hold any jobs before you got
6 into the prison system?

7 A. Not legally.

8 Q. All right. You mean were paid under the
9 table. Is that what you mean?

10 A. I have been.

11 Q. Okay. Well, I don't really care about that.
12 Now, you sued a number of people. You sued Kenneth
13 Kyler who used to be the superintendent at Camp Hill.
14 Is that right?

15 A. That's correct.

16 Q. How would you describe your dealings with
17 Superintendent Kyler?

18 A. All paperwork.

19 Q. You never met him face-to-face?

20 A. No.

21 Q. Okay. And when you say paperwork, what --
22 like what kind of paperwork did you have with
23 Superintendent Kyler?

1 A. Appeals and decisions made and grievances
2 and misconduct.

3 Q. Okay. What about William Ward, Unit
4 Manager, how would you describe your dealings with
5 him?

6 A. I couldn't really say. I have no idea. I
7 know who he is and I've dealt with him.

8 Q. All right. Did you ever meet with him face-
9 to-face?

10 A. Many times.

11 Q. All right. Now, what housing unit were you
12 in back at Camp Hill in '97? Where were you?

13 A. "E" block.

14 Q. "E" block. Is that the SMU?

15 A. That's the special management unit.

16 Q. And Mr. Ward was the unit manager in the
17 SMU?

18 A. Correct.

19 Q. Okay. Did you ever have any problems with
20 Mr. Ward on the SMU?

21 A. Can you clarify that?

22 Q. Well, did you ever have any disagreements
23 with him?

1 how long was your interview with Mr. Imschweiler?

2 A. Approximately or...

3 Q. Approximately.

4 A. I can't truthfully say, but it had to have
5 been about five minutes approximately.

6 Q. All right. Were you satisfied after that
7 meeting...

8 A. No.

9 Q. ...with his answers?

10 A. I appealed his decision when I received it.

11 Q. Okay. Have you brought any lawsuits before
12 this lawsuit?

13 A. Yes.

14 Q. Okay. Well, how many lawsuits have you
15 brought before this one?

16 A. Only one.

17 Q. And what was the name of that lawsuit?

18 A. Cleary versus -- Cleary versus Vaughn which
19 was amended to include versus Smith.

20 Q. And what was Cleary versus Vaughn all about?

21 A. It was an excessive force case stemming from
22 the -- from the incident at Graterford in 1995.

23 Q. Okay. You had been in Graterford in '95?

1 A. I was in Graterford from '90 until '92 and
2 then again from '92 until '95.

3 Q. You were there before coming to Camp Hill?

4 A. Right.

5 Q. How long were you in the SMU?

6 A. From December -- from October 10, '97. My
7 last day was August 27 -- no, let me take that back.
8 I was in the POC cell from the middle of June '99
9 until July 7, '99, which is the time I was sent to
10 Graterford MHU.

11 Q. Okay. All right. Whatever happened to that
12 lawsuit of Cleary versus Vaughn?

13 A. It was dismissed in a jury trial.

14 Q. You had a jury trial. Where was that jury
15 trial?

16 A. In Philadelphia.

17 Q. All right. Did you have an attorney for
18 that case?

19 A. Yes.

20 Q. What was his name?

21 A. Christopher J. Culletin (ph).

22 Q. And how did you get him?

23 A. He was court appointed.

1 Q. All right. Was he from Philly?

2 A. I don't know his, you know, his home address
3 if that's what you mean.

4 Q. Okay. You don't know where his office was?

5 A. Oh, his office is in Philadelphia.

6 Q. Okay. All right, and was he with a firm or
7 was he by himself?

8 A. He was with a firm.

9 Q. Do you remember the name of that firm?

10 A. Dechert Price & Rhoads.

11 Q. All right. That's a pretty big firm, isn't
12 it?

13 A. I don't know. I have never seen the place.

14 Q. Okay. What did you think of Mr. Culletin?
15 What did you think of his representation of you?

16 A. It was -- he did the best he could under the
17 circumstances.

18 Q. Okay. How long was that jury trial?

19 A. About a week.

20 Q. All right. And you say that you lost?

21 A. Right.

22 Q. What did the jury -- did the jury find in
23 favor of the officer that you had sued?

1 A. They found in favor in part on me and in
2 favor in part of them. It was a split decision.

3 Q. All right. What was the -- did you get any
4 money out of that decision?

5 A. No, neither one of us got money. Both of us
6 were seeking claims and neither one of us got
7 anything.

8 Q. When you say both, who do you mean both?

9 A. The officers that were seeking claims
10 against me while I was seeking claims against them.

11 Q. All right. So you both lost?

12 A. Yeah. We had a stalemate.

13 Q.. Okay. But a jury didn't give you any money?

14 A. No.

15 Q. Was there anything about the trial you think
16 could have been differently by Mr. Culletin?

17 A. No. I believe Mr. Culletin did everything
18 he could in his power.

19 Q. Okay. I'm going to ask you to take a look
20 at a complaint.

21 ***

22 MR. DORIAN:

23 We'll mark that Exhibit 1.

1

2 BY MR. DORIAN:

3 Q. Okay, do you want me to turn the pages for
4 you or can you -- do you need to look at the rest of
5 that?

6 A. You want me to look at this?

7 Q. Well, do you recognize what this is?

8 A. Yes, sir.

9 Q. What is it? What is this Exhibit 1?

10 A. It's Cleary versus Smith.

11 Q. Is that the complaint -- is that the case we
12 were just talking about...

13 A. Right.

14 Q. ...where the jury trial there was a
15 stalemate?

16 A. Right.

17 Q. All right. This is an extra copy. Do you
18 want this?

19 A. Yeah. I don't have copies of that.

20 Q. Before the trial did you meet with Mr.
21 Culletin and prepare for the trial?

22 A. I'm trying to remember. Yes, I did. Yes,
23 before the trial.

1 Q. Do you remember when that trial was, what
2 year?

3 A. It was in the beginning of '98 I believe.
4 I'm not exactly sure on dates on that.

5 Q. Okay. Did you put on any witnesses before
6 your trial?

7 A. I can't recall.

8 Q. Or not before the trial. During the trial
9 did you have any witnesses in your favor?

10 A. I can't recall.

11 Q. All right. Did you communicate with
12 Attorney Culletin before the trial?

13 A. Yes.

14 Q. All right. And how did you do that, by
15 writing, phone, face-to-face?

16 A. I was at Graterford and he visited me.

17 Q. Okay. How many times did he visit you at
18 Graterford?

19 A. I can't recall. It was more than once, but
20 I can't recall the exact number.

21 Q. Okay. When you were at Camp Hill, did Mr.
22 Culletin ever visit you?

23 A. Not that I recall.

1 Q. Okay. Did he ever call you? Or did you
2 call him?

3 A. Not that I recall.

4 Q. Okay. Did you ever write letters to Mr.
5 Culletin while you were at Camp Hill?

6 A. I had to send him stuff. I sent stuff to
7 him.

8 Q. All right. So you sent him letters, you
9 wrote letters to him?

10 A. Right. I remember that I sent mostly stuff
11 of exhibits. I remember because there was a request
12 process I needed first for photocopying...

13 Q. Okay.

14 A. ...which I can't recall the outcome and then
15 -- which I believe was denied because I was in
16 indigent. I had no money on the books...

17 Q. All right.

18 A. ...for the photocopying so he agreed to do
19 it and it was something about -- it was about a
20 request. I remember there was a request for -- to be
21 placed in the red for postage to send my exhibits and
22 all my paperwork to him.

23 Q. How many times would you say you wrote to

1 Mr. Culletin while you were in -- at Camp Hill?

2 A. I can't recall.

3 Q. Was it more than once?

4 A. Yeah, more than once.

5 Q. More than five times?

6 A. I can't recall.

7 Q. Okay. Did he write to you during that time?

8 A. I would say he did, but I haven't received
9 it. I received it lately.

10 Q. Did you ever -- do you recall how many times
11 -- or how many letters you got from Mr. Culletin while
12 you were in Camp Hill before the trial?

13 A. Not really because it's blending together
14 with Graterford. I remember receiving mail at
15 Graterford from him.

16 Q. Okay. How did you find out that there was
17 going to be a trial in 1998?

18 A. When they came and took me to court.

19 Q. Well, did you know ahead of time from your
20 lawyer that -- when the trial was supposed to be?

21 A. No.

22 Q. He never contacted you and said, "Hey, we've
23 got a trial coming up"?

1 A. Not that I knew of.

2 Q. Okay.

3 A. I didn't receive any mail or -- I believe I
4 didn't.

5 Q. Okay. I understand one of your complaints
6 about the -- about the mail is that you didn't get a
7 letter from Attorney Culletin. Is that right?

8 A. Right.

9 Q. Do you know -- well, when did you first find
10 out that there was this delay in the mail?

11 A. In November of '99.

12 Q. That's the first time you heard about it?

13 A. I received the package on one of the days, I
14 can't recall the exact day, November of 1999. I
15 believe it was in the complaint.

16 Q. Okay. Had you heard before that, before you
17 got that letter in the mail, that other inmates were
18 not getting their mail on time? Had you heard
19 anything about that?

20 A. No, but I knew about a lot of grievances
21 going on down there about people's mail and people
22 were expecting stuff and filing grievances on their
23 mail.

1 Q. All right.

2 A. I wasn't one of the noisemakers down there,
3 so I didn't do a lot of hollering. I only filed stuff
4 when it was, you know, when it was directly affecting
5 me...

6 Q. So you're saying...

7 A. ...that I knew of.

8 Q. You're saying other inmates in the SMU were
9 complaining they were not getting their mail?

10 A. Right.

11 Q. All right. Did you -- well, you were
12 complaining about your newspapers. Right?

13 A. Right.

14 Q. Did someone tell you that the mailroom was
15 messing up?

16 A. No, I had no idea.

17 Q. When did you first find out that -- about
18 the problem?

19 A. When I received the mail in 1999.

20 Q. Okay. And the letter from Attorney
21 Culletin, do you remember what was in that letter?

22 A. Actually, it was a big legal package. It
23 was -- it was the hardcopy of the deposition regarding

1 Cleary versus Smith.

2 Q. Okay.

3 A. It was a trial scheduling Order informing me
4 of trial that was in 1998. There was a letter inside
5 there. And as a matter of fact I sent you a copy of
6 the letter. It has all the contents of what's in
7 there. I didn't send that to you, I forgot.

8 Q. Okay. So you have the letter?

9 A. Not with me, no.

10 Q. You have it at Pittsburgh?

11 A. Right. I'll send you a copy when I get
12 back. I'll make some copies and I'll send you one.

13 Q. Okay, I appreciate that. And...

14 A. It will have -- there's a personal note he
15 wrote to me and the contents of the envelope which was
16 the hardcopy of the deposition...

17 Q. Okay.

18 A. ...the trial scheduling Order, another court
19 Order and -- from Judge Ludwig (ph) who was the
20 presiding Judge in Cleary versus Smith.

21 Q. What's the other Order talk about?

22 A. Pardon me?

23 Q. You said there was a second Order. What was

1 A. Right.

2 Q. Did -- during that four month -- four to
3 five month period, do you recall if you had any
4 contact with Culletin?

5 A. I could have, but I can't really recall. I
6 don't want to lie on the record and say that I did and
7 not. I mean, I could have and I might not have.

8 Q. Did you wonder where -- what was going on
9 with your case during that time?

10 A. Yes, I did.

11 Q. All right. Is there anything you think that
12 would have been different about your case and your
13 trial if you had received that package earlier?

14 A. I can't say, you know. That was up to the
15 jury. I mean, it could have, it could not have, you
16 know. It could have went either way, you know. I
17 believe I might have had a better chance. I'm not
18 saying that I would definitely have been victorious if
19 I had that. That's not what I'm trying to say.

20 Q. Why do you say that?

21 A. Because, you know, that's up to the jury
22 what they was going to find, you know. I could have
23 been more prepared I believe, you know, than I

1 actually was. I mean, then I could have been more
2 prepared than anything and still could have lost, you
3 know. It's...

4 Q. Well, did you...

5 A. I can't really say.

6 Q. Did you testify to the best of your ability
7 at that trial?

8 A. Yeah, I said everything that I remember.

9 Q. All right. And did it come down to a
10 credibility determination between you and the guards?

11 A. I believe that's about what it came down to.

12 Q. You were saying the guards at Graterford
13 beat you up and they were saying they didn't beat you
14 up. Is that basically what it was all about?

15 A. Yes.

16 Q. Okay.

17 A. It came down to something that I changed in
18 my statement that was, you know, that I didn't recall
19 saying in the deposition that changed when I was on
20 the stand even though there was clear evidence, you
21 know, that at least one of them assaulted me.

22 Q. Okay. Are you saying that the -- was Sue
23 Ann Unger the attorney for the -- from the AG's

1 office? Is she the one that did the trial...

2 A. Right.

3 Q. ...for the -- for the guards?

4 A. Yes.

5 Q. And you're saying she brought up something
6 in your deposition that you had -- you didn't recall?

7 A. I didn't recall, but I jumped out and
8 answered it anyway and it came down to that. She used
9 that. I didn't have a chance to refresh my mind.
10 This was like a year later, you know.

11 Q. Had your attorney reviewed your deposition
12 with you?

13 A. Briefly but not over that issue. When he
14 visited me at Graterford, we went over other things
15 that were more precedent at the time. I can't recall
16 exactly what.

17 Q. Okay. Did he have a copy of the transcript,
18 to your knowledge?

19 A. Yes, I know he did.

20 Q. All right. Now, the other thing you
21 complain about in your complaint is your -- some
22 religious items.

23 A. Right.

1 Q. What is your religious faith today?

2 A. I'm a Nazarite. That's a branch of the
3 Rastafori.

4 Q. Naza -- how do you spell that? Naza...

5 A. N-a-z-a-r-i-t-e.

6 Q. ...r-i-t-e, Nazarite. Nazarite, is that how
7 you say it?

8 A. Yes.

9 Q. And that's -- that's...

10 A. That's a branch of the Hebrew faith.

11 Q. Okay. The Rastafarian did you say?

12 A. No, not Rastafarian. That's something else.
13 It's called Rastafori. It's...

14 Q. Rastafori. How do you spell that?

15 A. Basically it's about...

16 Q. How do you spell...

17 A. R-a-s-t-a-f-o-r-i.

18 Q. F-o-i?

19 A. F-o-r-i.

20 Q. Rastafori. Rastafori, I never heard of
21 that. And you say that's like a Jewish...

22 A. Yeah, it's Judah Coptic.

23 Q. Coptic?

1 A. Yeah, it's Judah Coptic.

2 Q. And how long have you been a Nazarite?

3 A. Actually, I took the vow of the Nazarite in
4 '92 when I was in prison. About '92 I took the vow as
5 a Nazarite, but I've been in the Hebrew faith since I
6 was about 12.

7 Q. '92, okay. You took a vow?

8 A. Right.

9 Q. All right. And is there a -- I know they
10 have like a Muslim service in the prison for the
11 Muslims and, you know, for the Protestants they have
12 like a Protestant thing.

13 A. Right.

14 Q. Do they have anything for the Nazarites?

15 A. No.

16 Q. Like, for example, at Camp Hill did they
17 have something for Nazarites?

18 A. I wouldn't know about Camp Hill. I was
19 never in population.

20 Q. Oh, you were in the SMU. Okay, so you --
21 since you were in SMU you could not attend...

22 A. Any services.

23 Q. ...any services?

1 A. But as far as I understand, there's no --
2 there's no, how do you say it, organized congregation
3 of Nazarites. The closest thing to it would probably
4 be the Orthodox Jews.

5 Q. All right. Now, I know -- did -- when you
6 were at Graterford did -- was there any kind of Jewish
7 service?

8 A. Yeah, but they were Orthodox. I didn't...

9 Q. You didn't associate with them?

10 A. No.

11 Q. Okay. So there was no service you could go
12 to as a Nazarite at Graterford?

13 A. No, there was no organized service.

14 Q. All right.

15 A. See,...

16 Q. How about since...

17 A. Judah Coptic and Nazarite is the vow that I
18 was under which, you know, governed most of the stuff
19 that I did in my worship.

20 Q. All right. When did this Nazarite religion
21 start?

22 A. Back in the time of Abraham I guess.

23 Q. Okay.

1 A. Jesus was a Nazarite.

2 Q. Now, is there like a church for the
3 Nazarites somewhere in the United States?

4 A. In Israel.

5 Q. It's in Israel. Have you met any other
6 Nazarite people while in the state prison system?

7 A. I've met some.

8 Q. How about at Graterford, how many other
9 Nazarites were there?

10 A. There was a handful of prisoners that was
11 Nazarites in Graterford.

12 Q. All right. So there was only a handful?

13 A. Yeah.

14 Q. All right. So you guys didn't have your own
15 -- did you guys ever meet? Did you like have a
16 service on your own?

17 A. Basically, you know, the Nazarite is
18 basically individual, you know. That's the Rastafori.

19 Q. But how does...

20 A. It's more of an individual between self and
21 God. We're not like a congregated type. That's why
22 there is no congregation and there's no call for a
23 congregation from the Nazarite or the Rastafori.

1 Q. Well, how do you guys practice your
2 religion? How does someone know your -- how do you do
3 your -- practice your faith?

4 A. It's not for, you know, to proclaim to
5 people what you are, you know. It's between, you
6 know, it's between you and God, you know.

7 Q. Well, does the Nazarite -- people that
8 believe in the Nazarite faith do they have prayer
9 services?

10 A. Not in congregations, no.

11 Q. So they don't meet together and pray?

12 A. We pray individually.

13 Q. You pray separately. So as a Nazarite back
14 in when you were in Camp Hill, how often did you pray?

15 A. Pretty often. Almost every day.

16 Q. Okay. Okay, you prayed daily. How -- what
17 other things did you do as a Nazarite? Did you read
18 anything? Is there anything you read?

19 A. I read the torah.

20 Q. You read the torah. That's a Jewish book,
21 isn't it?

22 A. That's what I said. We're basically Hebrew
23 faith. We believe in the Old Testament. We don't

1 believe in the new.

2 Q. Is the torah the first...

3 A. The Old Testament basically. What you would
4 call the Old Testament.

5 Q. Is the torah the first couple books of the
6 Old Testament? Or what is the torah?

7 A. It's basically almost the whole...

8 Q. The whole Old Testament?

9 A. Yeah, excluding the Catholic version.

10 Q. Okay. All right, so how often while you
11 were at Camp Hill would you read the torah?

12 A. I tried to read it every day, but I'd be
13 lying if I said I read it every single day.

14 Q. Okay. All right, any other thing that you
15 did as a Nazarite?

16 A. Basically there wasn't nothing to do down
17 there. I read my books. I studied. I wrote to
18 several religious organizations that cover our faith,
19 you know.

20 Q. How about fasting, was that part of your
21 religion?

22 A. Yes.

23 Q. How would you fast?

1 A. I would have to fast with the Muslims
2 because we wasn't allowed to fast. Like I said, we
3 don't have no organized congregation like the Muslims
4 do or some other faiths do.

5 Q. How often would you fast as a Nazarite?

6 A. I always tried just to do Ramadan. I would
7 just go during the month of Ramadan because that's the
8 only time they would feed us at that time while I was
9 in SMU. Now I can fast -- in a normal population I
10 can fast on my own days.

11 Q. All right. So you try to fast during
12 Ramadan. Is there -- you said about the torah. Any
13 other holy books that the Nazarite people look to or
14 believe in?

15 A. We believe in all sources that -- like any
16 source of religious books like all the foundation
17 religions, as long as they coincide with what the
18 torah is saying. If there's something outside of the
19 torah, then we reject that part of other books.

20 Q. All right. Now, you say in your complaint
21 that there was some books that were delayed by the
22 mailroom...

23 A. Right.

1 Q. ...at Camp Hill?

2 ***

3 MR. DORIAN:

4 I'm going to mark some stuff here. Make
5 that Exhibit 3.

6 ***

7 BY MR. DORIAN:

8 Q. I'm going to show you what I've marked
9 Exhibit No. 3 and ask you are these copies of the
10 envelopes that you got in 1999 that were late? The
11 first page shows an envelope from the House of Yahweh
12 in Abilene, Texas. Do you see that?

13 A. No, I can't see. Okay, yeah, I see it.

14 Q. Is that one of the envelopes from the mail
15 that came late?

16 A. Close but not it. It's missing the Waymart
17 sticker again off the front.

18 Q. Okay. Anything else different about that
19 envelope?

20 A. I can't recall off the top of my head. I'll
21 have to send you another copy of mine.

22 Q. Now, the Waymart sticker is that something
23 that Waymart stamped on it?

1 A. No. That's something that Camp Hill put on
2 to send it to Waymart.

3 Q. Okay.

4 A. It has the Waymart address on it. It says,
5 "Forward to Waymart."

6 Q. Okay.

7 A. And the address there. And it was like
8 partially or mostly covering the address of the Camp
9 Hill. It's the same objection I have with the other
10 piece you showed me.

11 Q. All right. Now -- okay, other than --
12 except for that stamp, does that look like one of the
13 pieces of mail that you got?

14 A. Yes, it's close to it.

15 Q. Okay. What was in that envelope from the
16 House of Yahweh?

17 A. Religious tracts and little booklets.

18 Q. Okay. When -- how many religious tracts did
19 you have while you were at SMU?

20 A. I had some -- some that were my property
21 that they allowed me to have.

22 Q. Okay. Do you remember total how many you
23 had?

1 A. Not a number, but approximately about a
2 quarter -- a quarter of a box to a half a box, you
3 know, of a legal size box.

4 Q. All right. Would that be 20, 30, 40?

5 A. I don't know the size. The size of the
6 property room boxes.

7 Q. Well, I mean, how many -- these books you're
8 -- these tracts you're talking about, are they thin,
9 thick?

10 A. Some of them are a little bit thick and some
11 of them are real thin only having a few pages, some of
12 them having several pages.

13 Q. Well, altogether how many do you think you
14 had? 10, 20, 30, 40?

15 A. You know, I don't want to -- I don't want to
16 venture out with a number.

17 Q. Your best -- your best guess.

18 A. Approximately?

19 Q. Yes.

20 A. In my cell at one time about 20, 25.

21 Q. Okay. And then you had more in storage?

22 A. I had some in storage, yes.

23 Q. All right.

1 A. Probably about double that.

2 Q. Okay. All right, and would you read these
3 tracts on a regular basis?

4 A. Yes, I would read them on a regular basis.
5 I would study some of them to retain something from
6 them.

7 Q. And the tract that was in this envelope from
8 the House of Yahweh, what was that called?

9 A. There was several tracts.

10 Q. How many were there?

11 A. I don't know, but I'll send them to you. If
12 you want copies of them, I'll send you copies of the
13 materials.

14 Q. Well, maybe the first page of it.

15 A. Basically -- I'll give you an idea. It's
16 something like -- I got one expounding on the name of
17 Yahweh that's written in the torah...

18 Q. All right.

19 A. ...as opposed to Jehovah in the King James
20 version how that's, you know,...

21 Q. Okay.

22 A. ...that's not the correct name of the
23 Creator, you know.

1 A. No, I didn't. No, because I kept -- I kept
2 it long for a while and then I seen that they wasn't
3 going to allow me to move anywhere so...

4 Q. Well, after you cut your hair how soon did
5 you get transferred out of the SMU?

6 A. I didn't. What happened is all he did was
7 move me into a different cell. He had me between guys
8 that like to argue and fight all the time knowing that
9 I'm kind of peaceful and then, you know,...

10 Q. Well, I thought...

11 A. ...as soon as I cut my hair he decided to
12 move me into a more peaceful section of the block and
13 then I started doing all right for a while and then...

14 Q. Well, how long was it between when you gut
15 your hair until you got out of the SMU?

16 A. I can't recall exactly the amount of months.

17 Q. Did you cut your hair before the trial?

18 A. No.

19 Q. Okay. All right, so now -- are you now
20 still with the Nazarite faith?

21 A. Right, I am.

22 Q. But you say you're not under the vow?

23 A. I'm not under the vow. I'm still of the

1 Hebrew faith. See, Hebrew is the basis.

2 Q. Do you still practice the Nazarite faith?

3 A. I study the Nazarite because I plan on after
4 this, after -- basically I've made a vow to place
5 myself in shame for five years and that's what I'm
6 doing by shaving my head. That's shaming me.

7 Q. Now, were you still able to read the torah
8 without the tracts that you received late?

9 A. Oh, yeah, you can always read the torah.

10 Q. Were you still able to pray?

11 A. Yes.

12 Q. Were you still able to pray as often as you
13 could before...

14 A. Yes. I could pray anytime I wanted to.
15 There was no restrictions on that as far as I know.

16 Q. And you could still read the other tracts
17 you already had?

18 A. Yes. I could read them.

19 Q. Okay. Now, the next page of this exhibit is
20 another envelope. This is from something called
21 Yahweh's...

22 A. New Covenant Assembly.

23 Q. ...New Covenant Assembly, Kingdom City,

1 what's what...

2 A. Missouri.

3 Q. ...Missouri.

4 A. Right.

5 Q. Is that another piece of mail that you got
6 late?

7 A. Yeah. It's close but I've got the same
8 objections with that as...

9 Q. Okay. Except for that seal being missing
10 that you talked about, does it look like one of the
11 envelopes?

12 A. Pretty much.

13 Q. Okay. All right, and what was in this
14 envelope?

15 A. Small tracts on various subjects.

16 Q. Okay.

17 A. They're mostly mini-studies and stuff like
18 that.

19 Q. And that also had to do with the Nazarite
20 faith?

21 A. Right. The Nazarite/Hebrew.

22 Q. All right. Did you need those tracts in
23 order to pray?

1 A. Not to pray but, you know, to increase, you
2 know, to learn more.

3 Q. Okay. Do you still have those tracts today?

4 A. Yes.

5 Q. And could you give me a copy of the first
6 page of it?

7 A. I can get you some of them. See, they're
8 all different. They're little fold over things like
9 this. They open like this.

10 Q. How many pages are these tracts each?

11 A. All of them is one but they're like this.
12 They fold like this and they fold like this.

13 Q. Well, how many pages are there altogether?

14 A. Let's see, one, two, three, four, five.
15 Something like that.

16 Q. They're not like thick books?

17 A. No. A lot of these are like this. I've got
18 some that are thick books that I would have to do page
19 by page. Some of them are...

20 Q. But the ones you got in the mail they
21 were...

22 A. Some of them were like. The mini-studies --
23 what I'm talking about now is the mini-studies are

1 like that. They're only one page but it's like five
2 columns. They fold out like this.

3 Q. So some are just one page long?

4 A. Basically.

5 Q. The one typewriter page?

6 A. Yeah, they're called mini-studies.

7 Q. All right. And they told up. They're not
8 like a real book?

9 A. Yeah. Some of them are, some of them ain't.
10 They were all in the same envelope. I'll show you --
11 I'll send you what I have.

12 Q. All right. But you could still read your
13 other tracts even without these mini-studies. Is that
14 right?

15 A. Right. But the mini-studies were for me,
16 you know, it's like what you'd call Bible study.

17 Q. All right.

18 A. You know what I mean? It's like on the same
19 principle.

20 Q. Okay. And here's a third page on this
21 exhibit. It looks like it's two different envelopes
22 Hizmet Religious Books, Inc. and Astounding Love
23 Ministry, Inc. Are they two other envelopes that you

1 received late?

2 A. No. The one on the bottom ain't mine. I've
3 never seen that before. That's somebody else's.

4 Q. That's addressed to a Catchmore (ph). All
5 right.

6 A. Yeah. That's not even me.

7 Q. All right. I don't know why...

8 A. The one on the top I recognize except for
9 the sticker that's missing and then I can't see the
10 words that's on there because it's copied real dark.

11 Q. All right. Do you remember what came in
12 that book from Hizmet?

13 A. Yeah. That was stuff that had to do with
14 Nazarite or Hebrew faith. I thought it was when I
15 wrote to them and then I realized it wasn't.

16 Q. Okay.

17 A. I still have that, too. That's some other
18 books.

19 Q. So that has nothing to do with the Nazarite
20 faith?

21 A. No, that don't. It's religious books but
22 they don't have nothing to do with my faith in
23 particular.

1 Q. All right. What are they, Muslim books or
2 something?

3 A. Yes, that's exactly what they are.

4 Q. And you're not a Muslim?

5 A. No.

6 Q. Okay. Just curious, why were you getting
7 Muslim books?

8 A. I thought they was -- somebody told me that
9 they was Nazarite.

10 Q. Oh, okay.

11 A. It was under the Hebrew and it gave me the
12 address so I wrote to them. And...

13 Q. Okay. How about today, how often do you
14 pray today as a Nazarite?

15 A. As a Hebrew you mean. Like I said, I'm not
16 under the Nazarite vow this day.

17 Q. You're under what -- you're under a
18 different vow?

19 A. I'm still -- I'm still under Hebrew. No,
20 the vow from the Nazarite is part of the Hebrew faith.

21 Q. Okay. Do you consider yourself of the
22 Hebrew faith...

23 A. Right.

1 Q. ...today?

2 A. Yeah. Rastafori are under the Hebrew faith.

3 Q. And what do you do as a Hebrew today?

4 A. I pray. I observe the Sabbath.

5 Q. How often do you pray?

6 A. I try to pray every day. Sometimes several
7 days, sometimes I don't pray at all during a certain
8 day.

9 Q. And you say you observe the Sabbath. Did
10 you do that back when you were in Camp Hill?

11 A. I had no choice in that matter. I was
12 always in a cell. All that is is not cooking nothing
13 and basically you don't come out after sundown, no
14 operating no machinery or use no tools.

15 Q. When you were at Graterford were you in the
16 general population?

17 A. Yes.

18 Q. Did you observe the Sabbath...

19 A. Yes.

20 Q. ...when you were in Graterford?

21 A. I would just confine myself to this on
22 Sunday and that's what I do these days.

23 Q. Okay. Do the Nazarites wear any special

1 clothes or anything?

2 A. No.

3 Q. Did you ever discuss with Superintendent
4 Kyler about the delay in receiving the mail in this
5 case, the letter from Culletin and the religious
6 tracts?

7 A. You mean personally or what?

8 Q. Face-to-face.

9 A. No, I never met him personally. I never met
10 him face-to-face.

11 Q. All right. Did you ever file a grievance
12 about that delay?

13 A. I did file a grievance.

14 Q. Do you remember what they told you?

15 A. Yeah. They told me that they -- something
16 about they understand that they held up my legal mail
17 and stuff, you know. They apologized but that was it.

18 Q. All right. Do you know whose fault it was
19 that this mail wasn't delivered in a timely fashion?

20 A. I assume it falls on the three Defendants
21 because they I reckon -- I mean, I couldn't say it was
22 a certain officer because, like I said, I didn't
23 receive it. I didn't bring nobody in here to

1 substantiate it, you know, or didn't at least have a
2 supervisory role in this.

3 Q. All right. Do you know why...

4 A. I don't...

5 Q. Do you know if Superintendent Kyler had any
6 role in delaying your mail?

7 A. I can't say he had his hand in it
8 personally, but he's in a supervisory position and I
9 believe that falls under his jurisdiction.

10 Q. Okay. How about Unit Manager Ward, do you
11 know if he had any role in delaying your religious and
12 legal mail?

13 A. I can't say.

14 Q. What about Mr. Imschweiler, do you have any
15 reason to believe he had a role in delaying your legal
16 mail and your religious mail?

17 A. He's about the only one that I could believe
18 because he's in direct access and direct handling of
19 the mail in the mailroom.

20 Q. Do you know if any -- did you hear from any
21 other inmates what his role was?

22 A. I don't go on what other people tell me
23 usually like that.

1 Q. Since you got those pieces of mail in
2 November of '99, did you talk to any of those three
3 gentlemen; Ward, Kyler or Imschweiler about the delay?

4 A. I don't even know how to contact them even
5 to this day.

6 Q. All right. You were at Waymart when you
7 received them. Right?

8 A. Right.

9 Q. Did anyone explain to you why it was
10 delayed?

11 A. No. They just handed it to me and they
12 didn't even realize it I guess until I pointed it out
13 to the guards that handed it to me.

14 Q. Were you -- without the religious tracts
15 that you got in November of '99, were you still able
16 to practice your religious faith?

17 A. Yeah, I could practice it.

18 Q. Is there anything you want to add about any
19 of this -- any of your claims here today you think I
20 should know about about your claims?

21 A. No, I believe it's pretty clear.

22 Q. All right. Is there any witnesses -- do you
23 know what witnesses you intend to call if this thing

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN CLEARY,

Plaintiff,

v.

KENNETH KYLER, et al.,

Defendants

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Civil Action No. 1:CV-00-2125

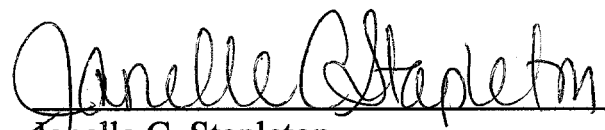
(Judge Caldwell)

CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of the foregoing Appendix to Defendants' Motion for Summary Judgment upon the person(s) and in the manner indicated below.

Service by first-class mail
addressed as follows:

John Cleary, DF-5779
SCI-Pittsburgh
P.O. Box 99901
Pittsburgh, PA 15233


Janelle C. Stapleton
Clerk Typist 2

PA Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: March 14, 2001